

**Applicant: Schwartz et al.**  
**Application No.: 09/706,508**

### **REMARKS**

In the office action, claims 1, 4-7, 10-11, 14, 17, 21-24 and 26-28 were rejected under 35 U.S.C. §102 as being anticipated by U.S. Patent Publication No. 2002/0094787(Avnet et al.); claims 2-3, 8-9, 12, 18-20 and 25 were rejected under 35 U.S.C. §103 (a) as being unpatentable over Avnet et al.; and claims 13, 15-16 and 38-49 were rejected under 35 U.S.C. §103(a) as being unpatentable over Avnet et al. in view of U.S. Patent No. 6,230,029 (Hahn et al.).

With respect to independent claims 1, 11, and 17, the claims have been revised to better indicate that the broadcast is a preexisting publicly available broadcast, such as a preexisting radio broadcast or television broadcast, and that the device only receives that preexisting publicly available broadcast. The Avnet et al. references disclose a device configured to receive a point to point communications within a certain venue, such as within a museum environment, which is different than a preexisting publicly available broadcast.

With respect to claim 38, Hahn discloses a communication device which is configured to clamp a listener's ear (the pinna) between the speaker portion of the device and the radio portion of the device. The communication device of the revised claims has a component configured to fit substantially in the concha portion of the listener's ear. By having a component configured to fit substantially in the concha portion of the listener's ear, stability of the communication device is increased. The

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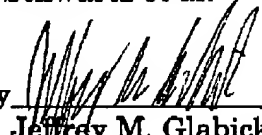
component can bias against various portions of the concha as the listener moves around, which is unlike the clamping configuration of Hahn. With respect to the Examiner interview, the undersigned and the Examiner agreed as to the Examiner attending to the interview summary.

Reconsideration and entry of this amendment is respectfully requested.

Respectfully submitted,

Schwartz et al.

By

  
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